

**ENVIRONMENTAL SERVICES
SPB05-894P-LL**

1. PARTIES

THIS CONTRACT, is entered into by and between the State of Montana, Department of Administration, State Procurement Bureau, (hereinafter referred to as "the State"), whose address and phone number are Room 165 Mitchell Building, 125 North Roberts, PO Box 200135, Helena MT 59620-0135, (406) 444-2575 and **Western Reclamation LLC**, (hereinafter referred to as the "Contractor"), whose nine digit Federal ID Number, address and phone number are 80-0020343, 506 Quartz Loop, Superior MT 59872 and (406) 822-4544.

THE PARTIES AGREE AS FOLLOWS:

2. PURPOSE

The purpose of this term contract is to establish a list of Environmental Service Providers in several service areas. All qualified offerors will be assembled into a multiple contractor term contract for use by state agencies and other public procurement units. The State makes no guarantee of use by any agency-authorized access to this term contract. However, through data conveyed by the Montana Department of Environmental Quality, Montana Department of Natural Resources and Conservation, and Montana Fish, Wildlife and Parks, it is anticipated that this term contract should access approximately 2.5 million dollars or more annually.

3. EFFECTIVE DATE, DURATION, AND RENEWAL

3.1 Contract Term. This contract shall take effect upon execution of all signatures, and terminate on June 30, 2007, unless terminated earlier in accordance with the terms of this contract. (Mont. Code Ann. § 18-4-313.)

3.2 Contract Renewal. This contract may, upon mutual agreement between the parties and according to the terms of the existing contract, be renewed in one-year intervals, or any interval that is advantageous to the State, for a period not to exceed a total of four additional years. This renewal is dependent upon legislative appropriations.

3.3 Addition of Analytical Laboratory Contractor. Proposals will be accepted between April 1 and May 1 of each calendar year from current firms requesting review of their qualifications to perform Analytical Laboratory Services as originally requested under RFP SPB05-894P. The state will evaluate each proposal received in the exact manner in which the original proposals for other categories were evaluated. If proposal passes the requirements as evaluated to perform Analytical Lab Services, the state will update that firms term contract to include the Analytical Lab Services category contingent on said firm being in good standing otherwise.

4. NON-EXCLUSIVE CONTRACT

The intent of this contract is to provide state agencies with an expedited means of procuring supplies and/or services. This contract is for the convenience of state agencies and is considered by the State Procurement Bureau to be a "Non-exclusive" use contract. Therefore, agencies may obtain this product/service from sources other than the contract holder(s) as long as they comply with Title 18, MCA, and their delegation agreement. The State Procurement Bureau does not guarantee any usage.

5. COOPERATIVE PURCHASING

Under Montana law, public procurement units, as defined in section 18-4-401, MCA, have the option of cooperatively purchasing with the State of Montana. Public procurement units are defined as local or state public procurement units of this or any other state, including an agency of the United States, or a tribal procurement unit. Unless the bidder/offeror objects, in writing, to the State Procurement Bureau prior to the award of this contract, the prices, terms, and conditions of this contract will be offered to these public procurement units.

6. TERM CONTRACT REPORTING

Term contract holder(s) shall furnish annual reports of term contract usage. Each report shall contain complete information on all public procurement units utilizing this term contract. Minimum information required to be included in usage reports: name of the agency or governmental entity who contacted you regarding a potential project; project title; agency contact person; if the project was not successfully negotiated, state the reason; number and title of contracts received; total dollar amounts for contracts received; the names of your company personnel involved in the project; and project status as of usage report date. The report for this term contract will be due on July 20th of each year.

Reported volumes and dollar totals may be checked by the State Procurement Bureau against State records for verification. Failure to provide timely or accurate reports is justification for cancellation of the contract and/or justification for removal from consideration for award of contracts by the State.

7. COST/PRICE ADJUSTMENTS

7.1 Cost Increase by Mutual Agreement. After the initial term of the contract, each renewal term may be subject to a cost increase by mutual agreement. Contractor must provide written, verifiable justification for any cost adjustments they request during each renewal period. Contractor shall provide its cost adjustments in both written and electronic format.

7.2 Differing Site Conditions. If, during the term of this contract, circumstances or conditions are materially different than set out in the specifications, the Contractor may be entitled to an equitable adjustment in the contract price. The Contractor shall immediately cease work and notify, in writing, the State of any such conditions necessitating an adjustment as soon as they are suspected and prior to the changed conditions affecting the performance of this contract. Any adjustment shall be agreed upon in writing by both parties to the contract.

7.3 Cost/Price Adjustment. All requests for cost/price adjustment must be submitted between April 1st and April 30th along with written justification. Requests received after April 30th will not be considered unless written approval from the SPB Contracts Officer is given to submit at a later date. In no event will cost/price adjustments be allowed beyond May 15th. All requests that are approved will be incorporated by contract amendment and made effective July 1st of the next approved renewal period.

8. SERVICES AND/OR SUPPLIES

8.1 Service Categories. Contractor agrees to provide to the State the following services:

Heavy Equipment Operators. The State and other governmental entities utilize the services of Heavy Equipment Operators to implement environmental projects throughout Montana. Heavy Equipment Operators are encouraged to submit a proposal to allow for easy access for implementation of projects by various governmental entities. Contractors do not have to possess the equipment, but when submitting a proposal, they must incorporate the cost of equipment rental, mobilization and demobilization. The State does anticipate several firms to respond to this service area and we are therefore allowing offerors to designate the parts of the state in which they will be available for work. The attached forms for Heavy Equipment Costs and Location must be completed and incorporated into the proposal.

8.2 Reuse of Documents. When the projects dictate a design or engineered approach, the State agrees that it will not apply the Contractor's designs to any other projects.

9. ENGINEERING ACCESS

All of the firms selected may need to have access to engineering services depending on the nature of the project. The contractor(s) will be expected to use their own best judgment as to whether engineering services are needed for a given project. However, traditional engineering methodologies are not the emphasis of this RFP. It is a violation of State Statute to practice engineering or land surveying without a license.

10. PROJECT SELECTION

10.1 Project Identification. The State will be responsible for identifying projects, contacting landowners and securing necessary permission/cooperation agreements, selecting a contractor, writing grant applications and approving project payments.

10.2 Hazardous Materials. The State will not initiate projects where it is known that hazardous materials are present. If there is an indication of a potential of hazardous materials, then the State will do testing prior to contacting the contractor. However, there is always the possibility of unforeseen problems resulting in the stoppage of a project.

10.3 Meetings. The selected contractor may be required to meet with State personnel at the project site to conduct a site evaluation, discuss project issues and begin the negotiation process on project feasibility, conceptual design and costs for each project.

10.4 Approach Expectations. In the case of restoration activities, the agency will identify the preferred techniques. The determination made by the State may define which contractor(s) are contacted for project initiation. The State is always open to new and innovative approaches that accomplish project goals.

11. SELECTING A CONTRACTOR

The State may select a term contract holder from the Environmental Services contract home page as provided under the state's website address

<http://www.discoveringmontana.com/doa/gsd/procurement/TermContracts/environservices/Default.asp>, taking into consideration such things as the contractor's area of expertise, requirements and location of the project, the contractor's availability and access to resources necessary to efficiently and effectively complete the project, demonstrated excellent past performance on State and public projects, identified subcontractors and total project cost.

General. Ordering agencies shall use the procedures in this section when ordering services priced at hourly rates as established by each Term Contract (TC). The applicable service categories are identified in each TC along with the contractor's price lists.

Request for Quotation (RFQ) procedures. The ordering agency must provide an RFQ, which includes the statement of work and limited, but specific evaluation criteria (e.g., experience and past performance), to TC contractors that offer services that will meet the agency's needs. The RFQ may be posted to the agency's state website to expedite responses.

Statement of Work (SOWs). All SOW's shall include at a minimum a detailed description of the work to be performed, location of work, period of performance, deliverable schedule, applicable performance standards and any special requirements (e.g., security clearances, travel, special knowledge).

- (1) Ordering agency may select a contractor from the appropriate service category and directly negotiate a mutually acceptable project based on a sudden and unexpected happening or unforeseen occurrence or condition, which requires immediate action. (Exigency).
- (2) Ordering agency may place orders at or below the \$5,000 threshold with any TC contractor that can meet the agency's needs. The ordering agency should attempt to distribute orders among all service category contractors.
- (3) For orders estimated to exceed \$5,000 but less than \$25,000.
 - (i) The ordering agency shall develop a statement of work.
 - (ii) The ordering agency shall provide the RFQ (including the statement of work and evaluation criteria) to at least three TC contractors that offer services that will meet the agency's needs.
 - (iii) The ordering agency shall request that contractors submit firm-fixed prices to perform the services identified in the statement of work.

(4) For orders estimated to exceed \$25,000. In addition to meeting the requirements of (3) above, the ordering agency shall:

- (i) Provide the RFQ (including the statement of work and the evaluation criteria) to a minimum of six service category TC contractors (if category has less than 6, all contractors will be offered an RFQ) with a 50% replacement factor for each subsequent request for quote in the same service category.

Evaluation. The ordering agency shall evaluate all responses received using the evaluation criteria provided in the RFQ to each TC contractor. The ordering agency is responsible for considering the level of effort and the mix of labor proposed to perform a specific task being ordered, and for determining that the total price is reasonable. The agency will place the order with the contractor that represents the best value. After award, ordering agencies will provide timely notification to unsuccessful TC contractors. If an unsuccessful TC contractor requests information on a task order award that was based on factors other than price alone, a brief explanation of the basis for the award decision shall be provided.

Minimum documentation. The ordering agency shall document:

- (1) The TC contractors considered, noting the contractor from which the service was purchased.
- (2) A description of the service purchased.
- (3) The amount paid.
- (4) The evaluation methodology used in selecting the contractor to receive the order.
- (5) The rationale for making the selection.
- (6) Determination of price fair and reasonableness.

Agency project task orders will be utilized to finalize the project. Only written addenda will be used for adjustments of the task orders and must be signed by both parties. All task orders must contain signatures from both parties and appropriate agency legal review as directed in their procurement policy.

The State will monitor contractor selection by using the information provided in the annual TC usage reports.

Contractor's who fail to respond to three RFQ opportunities within a one-year period between July 1st and June 30th may be removed from the qualified list of contractors.

12. CONTRACTOR RESPONSIBILITIES

12.1 Supervision and Implementation. The selected contractor for an individual project will be responsible for the supervision and implementation of the approach and will be responsible for oversight of work performed by all subcontractors. In most cases the contractor will provide and be responsible for all the necessary equipment, materials, supplies and personnel necessary for proper execution of the work. However, the State reserves the right to hire subcontractors (equipment and/or labor) if it will provide a cost savings to the State. The selected contractor will also be responsible for clean up of the sites if necessary and must have the sites inspected by the State immediately prior to completion.

12.2 On-Site Requirements. When a contractor is contacted by the State to discuss a project, the State and the contractor may visit the job site if deemed necessary by the Project Manager, to become familiar with conditions relating to the project and the labor requirements. The State will provide a detailed scope of work for the project and request the contractor supply the State with a response to project approach, cost, timeframe and any other information deemed necessary by the State to make a selection or complete a contract negotiation.

In the cases of Restoration or On-The-Ground Activities, the contractor shall adequately protect the work, adjacent property, and the public in all phases of the work. They shall be responsible for all damages or injury due to their action or neglect.

The contractor shall maintain access to all phases of the contract pending inspection by the State, the landowner, or their representative. All interim or final products funded by the contract will become the property of the State or Cooperative Purchaser upon payment for said products.

All work rejected as unsatisfactory shall be corrected prior to final inspection and acceptance. The contractor shall respond within seven calendar days after notice of observed defects has been given and shall proceed to immediately remedy these defects. Should the contractor fail to respond to the notice or not remedy the defects, the State may have the work corrected at the expense of the contractor.

12.3 Clean Up (when project tasks require). The contractor shall:

- Keep the premises free from debris and accumulation of waste;
- Clean up any oil or fuel spills;
- Keep machinery clean and free of weeds;
- Remove all construction equipment, tools and excess materials; and
- Perform finishing site preparation to limit the spread of noxious weeds before final payment by the State.

12.4 Applicable Laws. The contractor shall keep informed of, and shall comply with all applicable laws, ordinances, rules, regulations and orders of the City, County, State, Federal or public bodies having jurisdiction affecting any work to be done to provide the services required. The contractor shall provide all necessary safeguards for safety and protection, as set forth by the United States Department of Labor, Occupational Safety and Health Administration.

12.5 Cooperation. The contractor shall work closely with the States analytical consultants, (i.e. environmental laboratories and taxonomists) to develop the desired products.

12.6 Work Acceptance. The contractor is responsible for project oversight as needed. The State may also periodically provide personnel for administrative oversight from the initiation of the contract through project completion. All work will be inspected by the State or designated liaison prior to approval of any contract payments. All work rejected as unsatisfactory shall be corrected prior to final inspection and acceptance. Contractor shall respond within seven calendar days after notice of defects has been given by the State and proceed to immediately remedy all defects.

12.7 Records. The contractor will supply the State with documentation, when requested, of methods used throughout project implementation. Contractor will maintain records for themselves and all subcontractors of supplies, materials, equipment and labor hours expended.

12.8 Communication. Remoteness of project sites may necessitate that the contractor have some form of field communication such as a cellular phone. This communication is necessary to enable the State to respond to public concerns related to the project, accidents, inspections, or other project issues that require immediate feedback. In addition, the State or Cooperative Purchaser may require scheduled communication at agreed upon intervals. The communication schedule will be dependent upon the project circumstances and requirements of the contracting agency. In the case when a communication schedule is included in the Scope of Work, the schedule will commence when the contractor initiates the project.

12.9 Change Of Staffing. Since qualifications of personnel were key in determining which offerors were selected to be on this TC, a written notification of any changes in key personnel must be made to the state agency, prior to entering into negotiations to perform any specific work scope. Contractor shall replace such employee(s) at its own expense with an employee of substantially equal abilities and qualifications without additional cost to the agency. If these staffing changes cause the contractor to no longer meet the qualifications stated herein, that firm will be removed from the service area of this TC. Failure to notify the state agency of staffing changes could result in the contractor being removed from the TC listing and possible suspension from bidding on other state projects.

12.10 Collaboration. The State encourages collaboration between contractors to increase the scope of services offered. In cases where the chosen contractor is not able to provide all services needed for the project, the State will expect the chosen contractor to contact other contractors on this list to negotiate subcontracts for these services before going elsewhere. Exceptions to this strategy will be evaluated on a case-by-case basis.

12.11 Subcontractors, Project Budget and Invoicing. All subcontractors to be used in any project must be approved by the authorized entity initiating the project. Project budgets will be negotiated for each individual project contract. However, all rates, terms and conditions set forth in this term contract will be applied to individual contracts. Subcontractor is defined as anyone other than the prime contractor having substantial direct involvement in a specific project.

The State reserves the right to choose the invoicing method from the following:

- Prime contractor's billing will include the subcontractors charges and payment will be made to the prime, or
- Prime and subcontractors will bill the State separately and the State will pay each directly.

13. CONSIDERATION/PAYMENT

13.1 Payment Schedule. In consideration for the services to be provided, the State shall pay according to the negotiated agreement for each project. Hourly rates and miscellaneous charges as provided in Attachment B shall apply.

13.2 Withholding of Payment. The State may withhold payments to the Contractor if the Contractor has not performed in accordance with this contract. Such withholding cannot be greater than the additional costs to the State caused by the lack of performance.

14. CONTRACTOR REGISTRATION

The Contractor will be registered with the Department of Labor and Industry under sections 39-9-201 and 39-9-204, MCA, *prior* to contract execution. The State cannot execute a contract for construction to a Contractor who is not registered. (Mont. Code Ann. § 39-9-401.)

Contractor Registration Number: 146234

15. CONTRACTOR WITHHOLDING

Section 15-50-206, MCA, requires the state agency or department for whom a public works construction contract over \$5,000 is being performed, to withhold 1 percent of all payments and to transmit such monies to the Department of Revenue.

16. MONTANA PREVAILING WAGE REQUIREMENTS

Unless superseded by federal law, Montana law requires that contractors and subcontractors give preference to the employment of Montana residents for any public works contract in excess of \$25,000 for construction or nonconstruction services in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. Unless superseded by federal law, at least 50% of the workers of each contractor engaged in construction services must be performed by bona fide Montana residents. The Commissioner of the Montana Department of Labor and Industry has established the resident requirements in accordance with sections 18-2-403 and 18-2-409, MCA. Any and all questions concerning prevailing wage and Montana resident issues should be directed to the Montana Department of Labor and Industry.

In addition, unless superseded by federal law, all employees working on a public works contract shall be paid prevailing wage rates in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. Montana law requires that all public works contracts, as defined in section 18-2-401, MCA, in which the total cost of the contract is in excess of \$25,000, contain a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, travel, per diem, and zone pay that the contractors, subcontractors, and employers shall pay during the public works contract.

Furthermore, section 18-2-406, MCA, requires that all contractors, subcontractors, and employers who are performing work or providing services under a public works contract post in a prominent and accessible site on the project staging area or work area, no later than the first day of work and continuing for the entire duration of the contract, a legible statement of all wages and fringe benefits to be paid to the employees in compliance

with section 18-2-423, MCA. Section 18-2-423, MCA, requires that employees receiving an hourly wage must be paid on a weekly basis.

Each contractor, subcontractor, and employer must maintain payroll records in a manner readily capable of being certified for submission under section 18-2-423, MCA, for not less than three years after the contractor's, subcontractor's, or employer's completion of work on the public works contract.

The nature of the work performed or services provided under this contract meets the statutory definition of a "public works contract" under section 18-2-401(11)(a), MCA, and falls under the category of Heavy Construction and Nonconstruction services. The booklets containing Montana's 2003 Rates for Nonconstruction Services **and 2004 Rates for Heavy Construction** are attached.

The most current Montana Prevailing Wage Booklet will automatically be incorporated at time of renewal. It is the contractor's responsibility to ensure they are using the most current prevailing wages during performance of its covered work.

17. ACCESS AND RETENTION OF RECORDS

17.1 Access to Records. The Contractor agrees to provide the State, Legislative Auditor or their authorized agents access to any records necessary to determine contract compliance. (Mont. Code Ann. § 18-1-118.)

17.2 Retention Period. The Contractor agrees to create and retain records supporting the environmental services for a period of three years after either the completion date of this contract or the conclusion of any claim, litigation or exception relating to this contract taken by the State of Montana or a third party.

18. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

The Contractor shall not assign, transfer or subcontract any portion of this contract without the express written consent of the State. (Mont. Code Ann. § 18-4-141.) The Contractor shall be responsible to the State for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by the Contractor. No contractual relationships exist between any subcontractor and the State.

19. HOLD HARMLESS/INDEMNIFICATION

The Contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

20. REQUIRED INSURANCE

20.1 General Requirements. The Contractor shall maintain for the duration of the contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by the Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

20.2 Primary Insurance. The Contractor's insurance coverage shall be primary insurance as respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

20.3 Specific Requirements for Commercial General Liability. The Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns or subcontractors.

20.4 Additional Insured Status. The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds; for liability arising out of activities performed by or on behalf of the Contractor, including the insured's general supervision of the Contractor; products and completed operations; premises owned, leased, occupied, or used.

20.5 Specific Requirements for Automobile Liability. The Contractor shall purchase and maintain coverage with split limits of \$500,000 per person (personal injury), \$1,000,000 per accident occurrence (personal injury), and \$100,000 per accident occurrence (property damage), OR combined single limits of \$1,000,000 per occurrence to cover such claims as may be caused by any act, omission, or negligence of the contractor or its officers, agents, representatives, assigns or subcontractors.

20.6 Additional Insured Status. The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for automobiles leased, hired, or borrowed by the Contractor.

20.7 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be declared to and approved by the state agency. At the request of the agency either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the State, its officers, officials, employees, or volunteers; or (2) at the expense of the Contractor, the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

20.8 Certificate of Insurance/Endorsements. A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages, has been received by the State Procurement Bureau, PO Box 200135, Helena MT 59620-0135. The Contractor must notify the State immediately, of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. The State reserves the right to require complete copies of insurance policies at all times.

21. COMPLIANCE WITH THE WORKERS' COMPENSATION ACT

Contractors are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance with sections 39-71-120, 39-71-401, and 39-71-405, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither the contractor nor its employees are employees of the State. This insurance/exemption must be valid for the entire term of the contract. A renewal document must be sent to the State Procurement Bureau, PO Box 200135, Helena MT 59620-0135, upon expiration.

22. COMPLIANCE WITH LAWS

The Contractor must, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the Contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the Contractor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

23. INTELLECTUAL PROPERTY

All patent and other legal rights in or to inventions created in whole or in part under this contract must be available to the State for royalty-free and nonexclusive licensing. Both parties shall have a royalty-free,

nonexclusive, and irrevocable right to reproduce, publish or otherwise use and authorize others to use, copyrightable property created under this contract.

24. PATENT AND COPYRIGHT PROTECTION

24.1 Third Party Claim. In the event of any claim by any third party against the State that the products furnished under this contract infringe upon or violate any patent or copyright, the State shall promptly notify Contractor. Contractor shall defend such claim, in the State's name or its own name, as appropriate, but at Contractor's expense. Contractor will indemnify the State against all costs, damages and attorney's fees that accrue as a result of such claim. If the State reasonably concludes that its interests are not being properly protected, or if principles of governmental or public law are involved, it may enter any action.

24.2 Product Subject of Claim. If any product furnished is likely to or does become the subject of a claim of infringement of a patent or copyright, then Contractor may, at its option, procure for the State the right to continue using the alleged infringing product, or modify the product so that it becomes non-infringing. If none of the above options can be accomplished, or if the use of such product by the State shall be prevented by injunction, the State will determine if the Contract has been breached.

25. CONTRACT TERMINATION

25.1 Termination for Cause. The State may, by written notice to the Contractor, terminate this contract in whole or in part at any time the Contractor fails to perform this contract.

25.2 Reduction of Funding. The State, at its sole discretion, may terminate or reduce the scope of this contract if available funding is reduced for any reason. (See Mont. Code Ann. § 18-4-313(3).)

26. STATE PERSONNEL

26.1 State Contract Manager. The State Contract Manager identified below is the State's single point of contact and will perform all contract management pursuant to section 2-17-512, MCA, on behalf of the State. Written notices, requests, complaints or any other issues regarding the contract should be directed to the State Contract Manager.

The State Contract Manager for this contract is:

Robert Oliver, Contracts Officer
Room 165 Mitchell Building
125 North Roberts
PO Box 200135
Helena MT 59620-0135
Telephone #: (406) 444-0110
Fax #: (406) 444-2529
E-mail: roliver@mt.gov

26.2 State Project Manager. Each using State agency or Cooperative Purchaser will identify a Project Manager in the project task order. The Project Manager will manage the day-to-day project activities on behalf of the State/Cooperative Purchaser.

27. CONTRACTOR PERSONNEL

27.1 Change Of Staffing. Since qualifications of personnel was key in determining which offerors were selected to be on this term contract list, a written notification to the State Procurement Bureau of any changes of key personnel must be made within two weeks of the change. These change notifications will be completed upon the departure or hiring of key personnel who are professional employees critical to awarded service areas. If these staffing changes cause the firm to no longer meet the qualifications stated herein, that firm will be removed from the service area of this term contract. Failure to notify the State Procurement Bureau

of staffing changes could result in the contractor being removed from the term contract listing and possible suspension from bidding on other State projects.

27.2 Contractor Contract Manager. The Contractor Contract Manager identified below will be the single point of contact to the State Contract Manager and will assume responsibility for the coordination of all contract issues under this contract. The Contractor Contract Manager will meet with the State Contract Manager and/or others necessary to resolve any conflicts, disagreements, or other contract issues.

The Contractor Contract Manager for this contract is:

Kenneth Verly
506 Quartz Loop
Superior MT 59872
Telephone #: (406) 822-4544
Cell Phone #: (406) 239-2074
E-mail: kfv@blackfoot.net

27.3 Contractor Project Manager. The Contractor Project Manager identified below will manage the day-to-day project activities on behalf of the Contractor:

The Contractor Project Manager for this contract is:

William Peck
518 Quartz Loop
Superior MT 59872
Telephone #: (406) 822-0142
Cell Phone #: (406) 822-2536

28. MEETINGS

The Contractor is required to meet with the State's personnel, or designated representatives, to resolve technical or contractual problems that may occur during the term of the contract or to discuss the progress made by Contractor and the State in the performance of their respective obligations, at no additional cost to the State. Meetings will occur as problems arise and will be coordinated by the State. The Contractor will be given a minimum of three full working days notice of meeting date, time, and location. Face-to-face meetings are desired. However, at the Contractor's option and expense, a conference call meeting may be substituted. Consistent failure to participate in problem resolution meetings two consecutive missed or rescheduled meetings, or to make a good faith effort to resolve problems, may result in termination of the contract.

29. CONTRACTOR PERFORMANCE ASSESSMENTS

The State may do assessments of the Contractor's performance. This contract may be terminated for one or more poor performance assessments. Contractors will have the opportunity to respond to poor performance assessments. The State will make any final decision to terminate this contract based on the assessment and any related information, the Contractor's response and the severity of any negative performance assessment. The Contractor will be notified with a justification of contract termination. Performance assessments may be considered in future solicitations.

30. TRANSITION ASSISTANCE

If this contract is not renewed at the end of this term, or is terminated prior to the completion of a project, or if the work on a project is terminated, for any reason, the Contractor must provide for a reasonable period of time after the expiration or termination of this project or contract, all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this contract, except for those terms or conditions that do not reasonably apply to such transition assistance. The State shall

pay the Contractor for any resources utilized in performing such transition assistance at the most current rates provided by the contract. If there are no established contract rates, then the rate shall be mutually agreed upon. If the State terminates a project or this contract for cause, then the State will be entitled to offset the cost of paying the Contractor for the additional resources the Contractor utilized in providing transition assistance with any damages the State may have otherwise accrued as a result of said termination.

31. CHOICE OF LAW AND VENUE

This contract is governed by the laws of Montana. The parties agree that any litigation concerning this bid, proposal or subsequent contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana and each party shall pay its own costs and attorney fees. (See Mont. Code Ann. § 18-1-401.)

32. SCOPE, AMENDMENT AND INTERPRETATION

32.1 Contract. This contract consists of 12 numbered pages, any Attachments as required, RFP # SPB05-894P, as amended and the Contractor's RFP response as amended. In the case of dispute or ambiguity about the minimum levels of performance by the Contractor the order of precedence of document interpretation is in the same order.

32.2 Entire Agreement. These documents contain the entire agreement of the parties. Any enlargement, alteration or modification requires a written amendment signed by both parties.

33. EXECUTION

The parties through their authorized agents have executed this contract on the dates set out below.

**DEPARTMENT OF ADMINISTRATION
STATE PROCUREMENT BUREAU
PO BOX 200135
HELENA MT 59620-0135**

**WESTERN RECLAMATION LLC
506 QUARTZ LOOP
SUPERIOR MT 59872
FEDERAL ID # 80-0020353**

BY: _____
Penny Moon, Contracts Officer

BY: _____
(Name/Title)

BY: _____
(Signature)

BY: _____
(Signature)

DATE: _____

DATE: _____

ATTACHMENT A CONTRACTOR'S RESPONSE

Resume Letter for Western Reclamation, LLC

To Whom It May Concern:

Western Reclamation, LLC is a very diverse company that is capable of doing a large array of construction projects, reclamation, biomass grinding, soil contamination, fuel reduction. The company has been involved in several subdivision projects that have included: roads, water, sewer, multi-family dwelling and single home site preparations.

Western Reclamation, LLC has the resources to do asphalt projects, concrete work, sewer systems involving pump stations and large water systems that service multi-lot subdivisions.

We have a full-time crew of 14 people that are very skilled and have the expertise to perform any task presented to them. Many of the crew have operated heavy equipment and driven truck for the past 35 years.

Our company is based in Mineral County, which has been classified as an economically deprived area in the State of Montana. We are proud that we have provided jobs for the local work force and contribute nearly \$350,000.00 in annual wages to the area.

Our equipment is in top condition and can be mobilized with little notice. The company has equipment trailers and lowboys that are capable of transporting to job sites in an expedient manner.

The company strives to provide excellent work in a timely fashion at competitive rates. The following breakdown is a synopsis of projects Western Reclamation, LLC has been involved in for the past several years.

FISHERIES ACTIVITIES:

Western Reclamation has performed stream restoration for the U.S.F.S. on the Plains District at Weeksville. Included in the duties: stream bank restoration, culvert removal and disposal, install log weirs and veins in stream.

Culvert installation for U.S.F.S. on the Superior District included 80" x 120" culvert on Trout Creek. Installation of rock weirs and veins and placed rocks for fish habitat, slash filter windrows, dewatering, etc.

Culvert installation for the U.S.F.S. on the Superior District involving 12 Mile Creek. Activities included: 74" x 112" 10 gauge culvert install, fish habitat, weir veins, slash filters, filter cloth placement, straw filters.

Decommissioning of roads, many miles of Level #1 through Level #5.

RESIDENTIAL & COMMERCIAL SITE PREPARATION:

Western Reclamation, LLC has several years experience in site preparation for all types of building construction projects. The company has been involved in large subdivision ventures in Missoula

County as well as Mineral County. Westpointe Subdivision in Missoula, Montana is an ongoing project that includes: municipal water and sewer hookups, house and condo excavation, roads, water mains, rock walls, asphalt.

Projects also include 14 unit townhouse on one acre of land in Missoula, MT and a large maintenance complex for the State of Montana and commercial bank buildings.

FOREST ACCESS ROADS:

All aspects off forest road building have been performed by the company. They have built miles of new roads and reconditioned existing roads in Montana and Idaho. The duties involved with new road building have included: install culverts, bin walls, gabions, bridges. Screening gravel on site and off site with portable and stationary equipment. Laying gravel, grading, installing reflectors and signs. Rip rapping near waterways and bridges. The company owns their own screening plants and portable generators as a power source. Dump trucks, belly dumps, gravel pups, are all company owned and available and capable of moving large amounts of material in a short time frame. Western Reclamation, LLC has been involved in road reclamation and road obliteration. The company owns a slash buster that brushes out roadways and trailhead facilities and any other areas that need brush removal performed.

A Cat 312 excavator with a Towtem bucket is capable of many tasks in the forest setting. It has been pressed into service during the 2003 wild fires performing reclamation work in the Blue Mountain area of Missoula. Forest Service officials were very impressed with the excavator/towtem combination's versatility in the reclamation project. This piece of equipment is used for brush piling, fuel reduction, rockery placement, water restoration projects and a variety of other applications.

BIOMASS GRINDING & DISPOSAL:

A 2005 Vermeer grinder is available for the grinding of brush piles, fuel reduction by products, small trees, etc. The biomass can be spread back on the forest floor or Western Reclamation, LLC is capable of hauling all product to the local pulp mill or sawmills for hog fuel sale. Two 1999 Peterbilt trucks with chip vans are available to haul the product to the facilities. Shorter trailers are available to bring the hog fuel out of the woods and make it easier to access narrow forest roads and utilize existing turn around areas.

SOIL CONTAMINATION:

Western Reclamation, LLC has the capability to do oil spill and other contaminate clean up projects. A land farm site is available and state approved to reclaim the soils that may be damaged by fuel spills.

FUEL REDUCTION:

The company has been involved in several fuel reduction programs and worked closely with private landowners in terms of making their homes and property safer in the event of a fire. The 2002 341 Bobcat Excavator is on a rubber mounted track system, allowing for minimal damage to the soil and plant life. Small diameter trees are sold to the local sawmill and other debris is either ground for hog fuel or piled and burned. Grinding of the debris is preferable (if it is economically feasible); allowing for 100% utilization of forest products.

FIRE SUPPORT CONTRACTS:

The 2000 and 2003 fire seasons provided work for our Mack 4000 gallon water truck and our 3000-gallon water truck and 5000 gallon Butler water trailer. We provided water for helicopters and other portable fire fighting equipment. Our Cat 426 backhoe and Cat 312 Excavator with towtem bucket were contracted out for road restoration after the fires.

RECREATIONAL AND TOURIST FACILITIES:

Trailhead sites and tourist facilities are projects Western Reclamation has contracted to do in the past few years. Installation of cement bathroom facilities and other recreational amenities have been provided in accordance with Stewardship contracts.

EMPLOYEE PROFILE:

William Peck: Supervisor and operator with 35 years experience in road building and construction projects. William has been with the company for several years and is very skilled with caterpillars, excavators, trucking, supervising.

Steve Crabb: Excavator operator and driver with 33 years experience in all aspects of woods work and excavation. Steve is an artist with the towtem attachment on the 312 excavator in performing road building, road obliteration, fire reclamation, streamside work.

Darrell Hall: Graduate of the Montana College of Technology in Missoula, MT. He was schooled in heavy equipment work, safety, first aid, maintenance. Darrell is a very meticulous and dedicated worker, who does every job with precision. Agencies we have contracted with are always impressed with Darrell's work and his ability to perform all tasks that are requested of him. We are pleased to have him as our employee.

Howard Vigue: Supervisor of our Missoula area projects and excavator operator. Howard has 15 years experience in municipal water and sewer work and road construction. He is a self-starter who handles much of our bidding and supervision of a crew in Missoula. Site preparation, landscaping, grading, of house and multi-family dwelling sites are some of his expertise. Howard's experience and skills are the foundation for our business in the subdivision and municipal areas.

William Wikstrom: All around employee who can run grader, cat, excavator, screening plants, trucks and supervise crews when needed. William has been in the construction business for nearly 40 years and is capable of all aspects of the business. He is a mechanic during our winter months and keeps the equipment in good repair. William is always willing to do what is needed to make a project successful.

Jay Eggers: Jay has been with the company 2 years and is young and full of energy. He has the energy that is needed for 12-hour days and running hard and never complaining. He is learning from the older crewmembers everyday and has acquired many new skills. Jay is hard working and is mastering equipment operating and construction techniques. He is a super employee with a good attitude.

James Burr: Trucking driving with 30 years experience in over the highway and woods road driving. James is safety conscience and takes care of the trucks and other equipment he is towing around the area. He is very skilled in maneuvering in tight situations on forest access roads and is always courteous and respectful of other vehicles on these dangerous roads. James has a great attitude and does what he is asked with no complaints.

Miranda Brenna: Our all around laborer and great hand on the subdivision projects in Missoula. Miranda can run various pieces of equipment and drive truck she has extensive schooling in first aid and is an EMT. We are thankful for her medical and safety knowledge on the job sites.

Larry Kelley: Chip truck driver with several years experience of truck driving. Larry recently came to work for us last year and has proven himself as a good, safe driver in all situations.

Sidney Bartell: Chip truck driver with several years experience of truck driving. Sid works very hard and never says no to long hours. He has several years experience of driving chip truck and is a safe and courteous driver.

Oliver Wolfe: Truck mechanic with many years of knowledge. Oliver is dedicated and hard working and never saying no to weekend work and evenings. He keeps the trucks in top shape and also works on equipment when the time allows.

Robert Carroll: Part time driver during the summer months, who has several years experience in truck driving. He has gone on fires and ran backhoe and is capable of several different jobs. Safe, hard working, great attitude.

Seasonal employees: The construction season allows us to hire 4 – 5 additional employees as laborers and part time operators.

OWNER PROFILE:

Kenneth D. Verley: Owner of Western Reclamation, LLC who has 34 years experience in the timber industry. He has owned and operated his own logging and construction business for 20 years. Ken has ownership in Tricon Timber, LLC and has managed the mill successfully for 14 years.

Ken has worked with many Federal and State Agencies in the states of Montana, Idaho and Washington. He is active in promoting small log utilization and 100% utilization of forest products. He has worked with environmental groups trying to bridge the gap between the timber industry and the ecology interests.

Ken is committed in doing the best job for a competitive rate. He tries to provide employment for Mineral County and be an advocate for economic development and growth in our area.

Kathryn F. Verley: Co-Owner of Western Reclamation, LLC who manages the office and performs all payroll, accounts payable, accounts receivable duties. Kathy has 15 years experience in the administrative assistant field.

WORK REFERENCES:

Quarreling Eagles Road Construction

Contract No. 754486

Dollar Value: \$103,000.00 (9 month completion time – weather dependent)

David R. Faulkner

Forest Supervisor's Office

3815 Schreiber Way

Coeur d'Alene, ID 83815

Phone Number: 208-765-7268

E-Mail: davefaulkner@fs.fed.us

Work synopsis: U.S.F.S. forest road construction: build roads, install culverts, grade, gravel, reclamation

Game Range Stewardship

Contract No. 05-03881

Dollar Value: \$500,000.00 2 year project

Plains/Thompson Falls Ranger District

Chris Partyka

P.O. Box 429

Plains, MT 59859

Phone number: 406-826-4355

E-Mail cpartyka@fs.fed.us

Work synopsis: forest project: install roads, bin walls, trail head facility, lavatories, chipping all slash, reclamation

Knox Brooks Stewardship – LMA1

Contract No. 02038738

Dollar Value: \$250,000.00 2 year project

Superior Ranger District

Glenn Koepke

P.O. Box 460

Superior, MT 59872

Phone number: 406-822-4233

E-Mail g.koepke@fs.fed.us

Work Synopsis: Road obliteration, graveling roads, spraying, reclamation, new construction, culverts, earth berms, rip rap placement.

Brent Briggs

U.S.F.S. St. Maries Ranger Station

222 S. 7th Street Suite #1

St. Maries, Idaho 83861

Phone Number 208-245-6039

E-Mail: bbriggs@fs.fed.us

Eric Barclay

U.S.F.S. Superior Ranger Station

P.O. Box 460

Superior, MT 59872

Phone number: 406-822-4233

E-Mail ebarclay@fs.fed.us

Westway Construction, Inc.

P.O. Box 519

Airway Heights, Washington 99001

Ron Merrill

Phone number: 509-468-8535

Mickelson Rock Products
7005 Butler Creek Road
Missoula, MT 59801
Phone number: 406-523-6007

Higgins Consulting
323 West Pine Street
P.O. Box 7158
Missoula, MT 59807
Phone number: 406-728-4600

Eileen Wolff-Miller
P.O. Box 262
Carnation, WA 98014
Phone number: 1-425-333-5588

Durand Construction
P.O. Box 926
Polson, MT 59860
Phone number: 406-883-2466

Westpointe Subdivision
Joe Stanford
8100 Butler Creek Road
Missoula, MT 59808
Phone number: 406-829-5905

Old Mill Peninsula Homeowners' Association
Jeff Noonan
P.O. Box 363
St. Regis, MT 59866
Phone number: 406-564-8074

Family of Banks
Alan Bradley: Phone # 406-273-2400
Ed Hollenback: Phone# 406-822-8000
Bob Clark: Phone # 406-626-2400
Drawer 9
Lolo, Montana 59847